

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

<b>Bank of Louisiana</b>	)	
<b>Plaintiff.</b>	)	
	)	<b>Civil Action No.</b> _____
vs.	)	
	)	
<b>Federal Deposit Insurance Corporation,</b>	)	
<b>Defendant.</b>	)	
	)	
	)	

---

**DECLARATION OF G. HARRISON SCOTT**

STATE OF LOUISIANA


PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally appeared G. Harrison Scott, who states as follows:

1. I, G. Harrison Scott, am over the age of majority, have personal knowledge of the matters set forth herein, and am competent to testify as herein stated.
2. I am admitted to the Louisiana State Bar and am eligible to practice in this State.
3. From 1958 to 2015, I served as Chairman and intermittingly as President of the Bank of Louisiana; from January 2015 to the present, I have served as a Director and Chairman.
4. I alone prepared this declaration.

  
\_\_\_\_\_  
G. HARRISON SCOTT

Subscribed before me this 13<sup>th</sup> day  
of September, 2019.

  
\_\_\_\_\_  
Arthur Lemaitre IV  
# 23189

IN RE: [Illegible]

[Illegible]

[Illegible]

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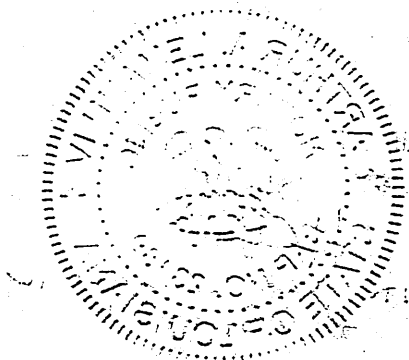
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I, G. Harrison Scott, as a member and Chairman of the Board of Directors of Bank of Louisiana, do hereby make this Declaration.

### **History**

Commencing in January of 2019, the Bank sought documents, primarily the minutes of the July 19, 2018 FDIC Board Meeting. At all times subsequent to January 1, 2019, Enforcement Counsel, the Executive Secretary and the Administrative Law Judges knew or should have known there are no transcripts or minutes for a notational meeting. The July 19, 2018 meeting was notational. It was not until July 30, 2019, when the FDIC finally made a written acknowledgement.

### **Request for Minutes**

01/25/19      Email to Valerie J. Best, Assistant Executive Secretary      Request – No Reply

“Ms. Best, it would be appreciated if you could furnish me with a copy of the Board minutes of July 19, 2018, or provide me with the website whereby we can retrieve. Also, am having the same problem with the Federal Register. Any help would also be appreciated.”

02/05/19      Email to Valerie J. Best, Assistant Executive Secretary

Second Request - No Reply

“Ms. Best, on January 25, 2019, I sent you the attached email; however, it was during the government shutdown and apparently you didn’t receive it. As noted, your help would be appreciated.”

02/14/19      Email to Regs      Executive Secretary, Custodian of the Record

“We are trying to obtain the FDIC Board of Directors Meeting Minutes of July 19, 2018. We went on the website: <https://www.fdic.gov/news/board/>

However when we search for the Board Minutes of July 19, 2018, there are no minutes.

We did find a Resolution on that date.

It would be most appreciative if you could tell me how to get a copy of these minutes.”

02/15/19      Email from Regs      8:26 a.m.      File FOIA

“In order to receive a copy of previous Board minutes, you must file a FOIA request.

You can place this request online at: <https://www.fdic.gov/about/freedom/>

Patricia Gurneau  
Regulatory Editing Specialist  
FDIC (F-1064)  
Legal Division – Executive Secretary Unit”

Contradicts 5 U.S.C. §552(a)(2) and (a)(2)(A).

02/15/19      Email to Regs 4:02 p.m.      Request

“Ms. Gurneau:

I believe you have a misunderstanding. These minutes and the order issued pursuant are part of pending litigation. However, even if it were not part of the litigation, these are public records and all we are asking is to tell us how to find it.

Thank you for your assistance.”

02/21/19      Email from Johnny Crow, Director of Bank of Louisiana

In doing my research for minutes. I have discovered that the only minutes listed in the ‘Federal Register’ are those meetings that are either open or closed. All of the dates of board meetings that are listed as ‘Notational’, I can find no mention or type of minutes for those meetings. I am attaching the list of all the meetings in 2018, I think you may have that copy, the minutes of the May 31, 2018 and November 20, 2018 meetings are presented in the Federal Register.

However, I did find that some items in the Notational meetings are in the Federal Register. For instance, July 19, 2018 resolution re: 'Notice of proposed Rulemaking ... etc, is listed and I've attached that copy.

02/26/19      Email to Robert Feldman, Executive Secretary

"I am sure you have 100 or more important things to do; however, the Board had a meeting on July 19, 2018 and I am simply endeavoring to get a copy of the minutes of that meeting. My folks have been unsuccessful.

I have certified copies of the Appointment Resolution and Scheduling Order. I would simply like a copy of the minutes. I have made requests to no avail.

Would you please make a request on my behalf?"

03/04/19

"Mr. Scott:

Thank you for your email request. Mr. Feldman asked me to respond to your email below. As our office [h]as previously indicated to you, please submit your request for records through the proper channels by filing a Freedom of Information Request. Here is the link to the FDIC FOIA page: <https://www.fdic.gov/about/freedom/index.html>. Here is a link to the online electronic FOIA request page: <https://efoiarequest.fdic.gov/>. Questions regarding the FOIA request process can be directed to the FDIC FOIA service center at (202) 898-7021.

Patricia Gurneau"

03/08/19      Email to Patricia Gurneau      Request for Minutes

"Appreciate your email of March 4, 2019. Let's not bother Mr. Feldman. This is simply clerical. Ms. Best furnished me with a certified copy of a resolution and order adopted by the Board at a meeting on July 19, 2018. She had to have the original

available (which would be in the minutes) when she certified the copy. What is the problem?

Respondent is charged with an offense in violating the July 19, 2018 Order and you are telling me that I have to proceed under the FOIA.

Please, let's stop all of this back and forth and have someone send me a copy of the minutes."

03/11/19

"Mr. Scott

I am unable to provide a copy of the minutes from July 19, 2018, unless the minutes are requested through FOIA. (She knew there were no minutes for Notational Meetings.) This is the policy of the FDIC which I must follow. The resolution provided by Ms. Best is public record and posted on our FDIC.gov webpage, so you could have obtained the resolution with or without Ms. Best's assistance. The minutes, however, are not posted on our website, and therefore, I cannot provide a copy of those to you without you filing a proper FOIA request. You may file an online FOIA request at the FDIC's FOIA Service Center located here: <https://www.fdic.gov/about/freedom/>

I apologize that I cannot be of additional assistance.

Patricia Gurneau" (She knew or should have known – no minutes.)

**Request For Production of Documents**

On April 4, 2019, having been unsuccessful in securing document production without filing a FOIA Request, the Bank filed a Section 308.25 Request For Production Of Documents, Exhibit 1.

04/16/19 Enforcement Counsel, by means of a letter, advised:

“Furthermore, with respect to the Bank’s attempted Request For Production of Documents, FDIC Enforcement Counsel believe that this discovery attempt is untimely and that no mechanism for additional discovery is provided under Part 308 related to this case.” Exhibit 2. (Not in compliance with 12 CFR §308.105(d) – must file motion within 10 days.)

04/16/19 Email to Scott Bailey, Enforcement Counsel

“This is to acknowledge receipt of your letter of April 16, 2019. We will be expecting a production of documents as requested on Thursday, April 18, 2019.”

Although no Motion to Limit Discovery was filed, this “believe” sufficed to preclude the Production of Documents. There has been no Production of Documents to date. 12 CFR §308.105(d)

**Docket Sheet or Index of the Record**

04/23/19 Email to OFIA

“I am trying to obtain a copy of the current docket sheet, or the index of the record of the administrative proceedings, in this matter as well as in the 17-0086k case. If you could point me in the right direction, I would be much obliged.  
Thanks.”

04/24/19 Email from OFIA, Christopher McNeil, ALJ

“All requests for copies of documents maintained by OFIA in Bank of Louisiana – FDIC 12-489b and FDIC 12-479k, and FDIC-17-0086k may be directed to the public records office of the Federal Deposit Insurance Corporation, at <https://www.fdic.gov/about/freedom/index.html> or the FDIC’s Office of Communications at (202) 898-6993.

Christopher McNeil  
Administrative Law Judge  
Office of Financial Institution Adjudication”

04/24/19 Email from [frosser@fdic.gov](mailto:frosser@fdic.gov)

“Your Freedom of Information Act/Privacy Act request --- proceedings 12-489b, 12-479k and 17-0086k has been received by the FDIC’s FOIA/Privacy Act Group and assigned Log Number 19-0186. (Available by computer 5 USC §552(a)(2)(E).)

Please be advised that the FOIA allows 10 business days from date of receipt to process your request ---.”

05/07/19 Exhibit 3

“Dear Mr. Scott:

On May 3, 2019, I received your email attaching a Motion for an Order Directing Compliance with Request for Production of Documents (Motion) and supporting exhibits to be filed in the above-referenced matter. The record in this matter was deemed complete and submitted to the Board for final decision on February 28, 2019. Document discovery is not available at this stage of the proceedings. *See* 12 C.F.R. 308.24(d). Your request for production of documents is therefore untimely and is not a proper subject for a motion to the Board of Directors. Please be advised that the FDIC’s rules prohibit frivolous, dilatory, or repetitive motions, and the filing of such motions may serve as a basis for sanctions. 12 C.F.R. § 308.23(e).

Robert E. Feldman  
Executive Secretary”

05/22/19 Exhibit 4

“Dear Mr. Feldman:



It is noted that, ‘The record in this matter was deemed complete and submitted to the Board for final decision on February 28, 2019.’ This is correct. Counsel for Respondent is well aware and that is why the Motion was directed specifically to the Board of Directors for their decision as to whether or not they would entertain the request.

The letter also advises Counsel that, ‘—the FDIC’s rules prohibit frivolous, dilatory, or repetitive motions, ---.’ Counsel does not file frivolous pleadings, nor those that are dilatory. As for repetitive, Counsel will be repetitive as long as Enforcement Counsel is dilatory.

The letter further states, ‘--- such motions may serve as a basis for sanctions.’ Sanctions are a two-edge sword. See *FDIC v MAXX, Inc.* 523 F3rd 566 April 13, 2008.

G. Harrison Scott”

05/28/19 Exhibit 5

“Dear Mr. Lemann:

This will respond to your electronic mail request of April 24, 2019 ---. In your e-mail, you ask for ‘the current docket sheet or index of the administrative proceedings reflecting all actions, orders, filings, etc. in the administrative record of enforcement proceedings 12-489b, 12-479k and 17-0086k.’

Our search has been completed, and records have been found, but have not yet been reviewed. The estimated cost to process your request is \$539.50, consisting of 6.5 hours of search and review time at \$83.00 per hour. --- you must make an advance deposit equal to twenty (20) percent of the estimated costs (\$107.90).

For the reasons stated, we cannot further process your request at this time.

If I do not receive a reply from you within ten (10) calendar days, I will assume you have decided not to pursue your request and our file on this matter will be administratively closed. (less than 250 pages)

Lisa M. Snider  
Government Information Specialist  
FOIA/PA Group, Legal Division”

06/12/19      Email to L. Snider, FDIC.gov      Exhibit 6

“Ms. Snider, I understand the research and documents have been found for #19-0186. As for the minutes requested in #19-0212, it should only take seconds to find them and minutes to print them out. (see attached).”

06/17/19      Letter

“Dear Mr. Lemann:

Our search has been completed, and we have located responsive records for your request (Log No. 19-0186), which are being released to you in full. (7 weeks later)

Lisa M. Snider  
Government Information Specialist  
FOIA/PA Group, Legal Division”

06/17/19      Letter from Lisa M. Snider  
Log Number 19-0212

“Dear Mr. Lemann:

This is in final response to your request of May 28, 2019, which is being processed pursuant to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. §552.

In your request, you ask for the following:

A copy of the minutes of the July 19, 2018  
FDIC Board of Directors meeting.

Following a records search, 21 pages of responsive records were located.

(Not responsive – no minutes.)

Lisa M. Snider  
Government Information Specialist  
FOIA/PA Group, Legal Division”

06/27/19      Email to Lisa Snider, FDIC

“Ms. Snider,

Please consider this in response to your response to my 19-0212 FOIA request, which I attach hereto for your convenience.

The document included with your response seems to be a resolution adopted by the Board of Directors. It does not seem to be the actual minutes of the Board’s meeting. I will cite the Code of Federal Regulation that provides for what should be recorded in the minutes. Incidentally, the regulation also provides that the minutes should be provided by the FDIC for ten cents a page.

Thank you for your assistance and I will forward to your response.

Please see:

12 C.F.R. 311.8, Transcripts and Minutes of Meetings:”

07/02/19

“Ms. Snider:

In my capacity as an attorney for the Bank of Louisiana, I have to say that I am disappointed thus far in the FDIC’s handling of this matter. I asked for a copy of the minutes and I received a copy of a Resolution and Order.

Please advise if you are going to send me a full copy of the minutes, Yes or No. If “Yes,” when can they be expected? If “No,” why not? Considering the code of Federal

Regulations governing the FDIC, is there any particular problem complying with my request.

I understand that you have been out of the office, but a reply by July 12 would be appreciated. Thank you for your attention to this matter.

Arthur A. Lemann, IV”

07/09/19 Request for Minutes of May 28, 2019 Meeting

“Mr. Robert E. Feldman  
Executive Secretary

“Accordingly, I am requesting a copy of a transcript of the Board Meeting of May 28, 2019. If there is no transcript,--- please send a copy of the minutes of the meeting ---.”

07/10/19 FDIC FOIA Log # 19-0244 – Acknowledgement of Request for Minutes of  
Notational Board Meeting on May 28, 2019

07/10/19 Sarah Cunannon - voicemail

“Hi Mr. Lemann, um, My name is Sarah Cunannon. I am counsel here at the FDIC and I’m with, um, Lisa Snyder, who has been handling your FOIA request 190212. (Request for Minutes of July 19, 2018 Notational Meeting.) We just want to give you a quick call back to let you know, for the date you asked for there actually weren’t board minutes but we wanted to be as helpful as possible so um, there was a notational, there were notational votes. At the FDIC when we have notational votes we have what is called a memorandum of action. We don’t actually have minutes, so we gave those to you, um, like I said, there were no minutes so we didn’t want to give you a no records response, we wanted to try and be as helpful as possible. But if you have any questions about that, feel free to give me a call. My phone number here is 703-562-2125 again that’s, 703-562-2125 and um, my name again is Sarah Cunannon.”

07/15/19      Email      In lieu of minutes, document request

“Ms. Snider:

Since Ms. Cunannon advised that there were no minutes of the July 19, 2018 Board Meeting, please send the documents and documentation incidental to the meeting by Monday, July 22, 2019.

Arthur Lemann, IV”

07/16/19      Email - Request Assigned Log No. 19-0248

“Dear Mr. Lemann:

Your Freedom of Information Act/Privacy Act request for the documents and documentation incidental to the Board of Directors meeting has been received by the FDIC’s FOIA/Privacy Act Group and assigned Log Number 19-0248.”

07/18/19      Letter - In re: FDIC FOIA Log Number 19-0248

“Dear Mr. Lemann:

The processing of this request has been abated pending ---, you have not paid in full the earlier Invoice (\$99.30) ---.

Alisa Colgrove”

07/18/19      Email from Arthur Lemann to Ms. Colgrove

“Ms. Colgrove,

I am sending you an email confirmation that shows the balance was paid on July 15.”

07/19/19      Email from Ms. Colgrove to Arthur Lemann

“Dear Mr. Lemann,

Just for clarification, are you looking for documentation of every topic in that July 18<sup>th</sup> Notational Vote?

It will not be possible to meet your Monday deadline if you are interested in all the topics.”

(Ms. Colgrove asks for clarification – clarify – new FOIA Request by FDIC)

07/19/19 Email from frosser,FDIC

Acknowledgement of new request -FOIA Log # 19-0252

07/22/19 Email to Alisa Colgrove from Arthur Lemann  
Subject: Your email of July 19, 2019 re: Documents and Documentation of July 19, 2018 Board Meeting

“--- please cancel my FOIA request, 19-0248, ---.”

07/24/19 Email from Ms. Alisa Colgrove to Mr. Arthur Lemann

“As requested, I will close request 19-0248 and have a new request opened for you.

New FOIA request:

Documents and Documentation of July 19, 2018 Board Meeting (Notational Vote) from Notice of Meeting to adjournment and publication.

Additionally you are requesting citations defining and authorizing Notational Meetings and Notational Votes.”

07/30/19 Letter - FDIC FOIA Log Number 19-0244 Exhibit 7

“Dear Mr. Scott:

This is in final response to your request of July 9, 2019, which is being processed under the Freedom of Information Act (FOIA), 5 U.S.C. §552. In your request, you ask for the following:

I am requesting a copy of a transcript of the Board Meeting of May 28, 2019.

If there is no transcript, could you please furnish the reasons? In the alternative, please send me a copy of the minutes of the meeting, together with Notice and any documents. 12 C.F.R. 3118 Transcripts and Minutes of Meetings.

The FOIA permits a person to request access to agency records. Agency records are records that are (1) either created or obtained by an agency, and (2) under agency control at the time of the FOIA request. This meeting was conducted by notational vote and as such, there are no minutes or transcript of the meeting prepared. A 'Memorandum of Actions of the Board of Directors of the FDIC' is prepared in these instances. Unfortunately, the Memorandum of Actions of the Board of Directors of the FDIC for the May 28, 2019 notational vote have not yet been finalized. Therefore, as the records you seek do not presently exist, there are no agency records of the FDIC to provide for your request.

Since your request does not seek access to FDIC agency records which presently exist, it cannot be processed further, and we are administratively closing our file. You may wish to submit a new FOIA request at a later date, when it is more likely that the Memorandum of Actions of the Board of Directors of the FDIC for May 28, 2019 will be in final form (they generally take about 3 months to finalize).

You may contact me at [lsnider@fdic.gov](mailto:lsnider@fdic.gov) or 703-562-2761, for any further assistance and to discuss any aspect of your FOIA request.

Sincerely,  
Lisa M. Snider  
Government Information Specialist  
FOIA/Privacy Act Group, Legal Division"

08/02/19      Email to Robert E. Feldman      Exhibit 8

"Mr. Feldman:

Attached are two letters addressed to Ms. Jelena McWilliams, Chairman of the Board of Directors.

I ask that you please forward this email to her since I do not have her email address.

The original letters will be mailed.”

08/02/19 Letter to Ms. Jelena McWilliams Exhibit 9

RE: Petition for an Order Directing the Executive Secretary to Provide All Documents and Documentation Incidental to the May 28, 2019 Board Meeting – FOIA Log Number 19-0244

08/02/19 Letter to Ms. Jelena McWilliams Exhibit 10

RE: Petition for an Order Directing the Executive Secretary to Provide All Documents and Documentation Incidental to the July 19, 2018 Board Meeting – FDIC 12-289b and FDIC 12-479k

08/05/19 Email from EFOIA@FDIC FDIC FOIA Log #19-0011-A

“Dear FOIA Requester:

Your Freedom of Information Act/Privacy Act appeal ‘from a denial to furnish documents and documentation incidental to a Board meeting on May 28, 2019 - #19-0244,’ which appeal is dated August 2, 2019, has been received by the FDIC and assigned Log Number 19-0011-A.

Sincerely

FOIA/Privacy Act Group, Legal Division”

08/05/19 Email from EFOIA@FDIC FDIC FOIA Log #19-0012-A

“Dear FOIA Requester:

Your Freedom of Information Act/Privacy Act appeal dated August 2, 2019 related to, among other things, Arthur Lemann’s FOIA for the minutes of the July 19, 2018 meeting, has been received by the FDIC and assigned Log Number 19-0012-A.”



08/07/19 Email to Lisa M. Snider

“Ms. Snider, now that Counsel has been informed that neither a transcript nor minutes are prepared for Notational Meetings, it would be appreciated if you could furnish me with details to support the processing charges of \$539.50 for 6.5 hours per your memo of May 28, 2019, Log No. 19-0186, and the additional bill for \$99.30 dated June 13, 2019, Request No. 19-0212. Bills attached.

Thanks.

G. Harrison Scott”

08/08/19 Email to G. Harrison Scott

“Mr. Scott:

The itemized invoices which you reference reflect the charges which were incurred by the FDIC as a direct result of processing both of Mr. Lemann’s FOIA requests (#19-0186 & #19-0212), ---.

Lisa M. Snider  
Government Information Specialist  
FOIA/Privacy Act Group, Legal Division”

08/13/19 Email to Lisa M. Snider

“Ms. Snider, it appears we have a problem communicating.

Prior to your July 30, 2019 letter verifying that no minutes are taken at Notational meetings, I was led to believe there was a Board Meeting and minutes for a meeting on July 19, 2018. Now that I know there are no minutes, I would like to see the detail supporting 6.50 hours of research. It would be appreciated if you will provide.

Thanks.

G. Harrison Scott”

08/13/19 Email to Alisa Colgrove

“Ms. Colgrove:

On August 5, 2019, I received a verification of an appeal filed by Arthur Lemann dated August 2, 2019. If my recollection is correct, he was not in the United States on August 2, 2019.

The verification also notes Arthur Lemann’s FOIA for minutes of the July 19, 2018 meeting. Why would he be requesting the minutes on August 2<sup>nd</sup> when he was informed by Ms. Snider on July 30, 2019 that there are no minutes?

Have you had the opportunity to cancel?

G. Harrison Scott”

08/14/19 Email to Mr. Scott

“Mr. Scott:

The invoice for \$539.50 which you are objecting to *was not issued* in connection with Mr. Arthur Lemann’s FOIA request #19-0212, for the minutes of the July 19, 2018 Board of Directors meeting. It was issued in connection with Mr. Lemann’s FOIA (Docket/Index) Request #19-0186, ---. This is the only invoice ‘detail’ that we provide.

Sincerely,

Lisa M. Snider”

08/20/19 Email to Mr. Scott

“Good morning,

The August 2, 2019 appeal was signed by G. Harrison Scott on behalf of Mr. Lemann.

I did close the appeal for Mr. Lemann that I was processing.

Usually, I would not close out a request without direct consent from the requester, but since the appeal is basically the same as the request, I did close it.

I am sorry for the confusion. I hope this helps to clarify.

Thank you.

Alisa N. Colgrove”

08/27/19 Letter By Email from Barbara Katron, FDIC Senior Counsel Exhibit 11  
to [executiveoffice@bankoflouisiana.com](mailto:executiveoffice@bankoflouisiana.com)  
FOIA Log No. 19-0244

“Dear Mr. Scott:

For the reasons discussed above, your appeal is granted in part and denied in part.

Because your FOIA appeal has been denied in part, you may seek judicial review in the United States District Court under 5 U.S.C. § 552(a)(4)(B).

Sincerely,

Barbara Katron”

08/28/19 Letter By Email from Barbara Katron, FDIC Senior Counsel Exhibit 12  
to Arthur Lemann, Esq.  
FOIA Log No. 19-0212

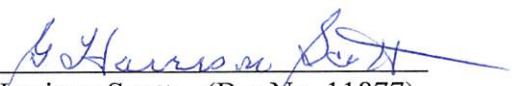
“Dear Mr. Lemann:

For the reasons discussed above, your appeal is denied. Because your FOIA appeal has been denied, you may seek judicial review in the United States District Court under 5 U.S.C. § 552(a)(4)(B).

Sincerely,

Barbara Katron”

The Bank has exhausted all efforts to obtain the records of the July 19, 2018 Board Meeting.

  
G. Harrison Scott (Bar No. 11877)

Dated September 13<sup>th</sup>, 2019